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NECESSARY PANAMA CANAL LEGISLATION

BY EMORY R. JOHNSON

THE greatest engineering work of the ages is within two years of completion. It is confidently expected that the Panama Canal will open its gates to merchant ships during the year 1914; for by that time the waterway, though lacking minor details, will be far enough advanced to allow even the largest vessels to pass with comparative safety from ocean to ocean. The year 1914 will be employed in the final work of construction, in training the operating force, and in tuning up the complicated machinery until power-plants, lock-gates, valves, and motors shall respond with precision to the touch of button and the turn of lever; then on New Year's Day, 1915, the Canal will be formally opened with appropriate ceremony. War vessels from the fleets of all nations will unite with the dreadnoughts of the American Navy in an imposing progress from the Caribbean to the Pacific. Thus will be celebrated the triumph of a third of a century of endeavor, the realization of the hope of Columbus, of Balboa, and of De Lesseps.

The problems of canal construction have been revealed and solved—disease has been held in check, the Gatun Dam has been established upon a broad and sure foundation, the massive locks will be completed during 1912, and their operating machinery will be installed before the close of 1913. Even the sliding banks of the Culebra Cut, which during 1909 and 1910 caused no little anxiety, are approaching the angle of repose. The days of uncertainty are past; it is now possible and necessary to plan for the future. What shall be the future of the Canal Zone? How shall the Canal be operated? What tolls shall be charged for its use? These

are pressing questions to be answered by Congress and the country as soon as a wise decision can be reached.

From the American occupation of the Canal Zone in 1904 until the present time, the Zone has been governed by the President of the United States, whose executive orders are the law of the land. The President has acted without a grant of authority by Congress, there being no disposition on the part of Congress to place any restrictions whatever upon the President other than those imposed upon him by the Spooner Act of 1902, which instructed the President to construct the Canal through the agency of a commission of seven men. The time has now come when Congress should act; it should give legislative sanction to the executive orders issued during the past seven years, and should definitely authorize the President to govern the Zone in the future.

Different views are held concerning the policy to be adopted for the future government of the Canal Zone and for the operation of the Canal. There are those who, animated by a zeal for the spread of democratic institutions, would seek to make the Zone a model republic—an ideal to inspire all Latin America. Those who are of this mind would maximize the civil government of the Zone, place a civilian governor at its head, and make the superintendent, or director, of the Canal a subordinate in charge of one department of the civil administration. Others, equally patriotic, would have Congress authorize the President of the United States to establish military rule upon the Isthmus by placing a major-general in charge of the fortifications and making him the director of the Canal. Those who would emphasize the civil authority would dissociate the civil and military functions of government, and would welcome the settlement of the Canal Zone, preferably by a permanent population of American homesteaders; while those who advocate the military administration of the Canal contend that the Zone cannot be profitably cultivated, and that, if successful farming were possible, the portions of the Zone not occupied by the Canal and its appurtenances should be kept as a government reservation to be used as future needs may require for the enlargement of the Canal and for the purposes of the Army and Navy.

The issue, thus stated, seems to be clear cut. Shall the Zone be a military reservation, and shall the Canal and the

Zone be subject to the Commander of the Forts, or shall the three hundred and forty square miles (more or less) of land within the Canal Zone not immediately required by the Canal and its auxiliary works and structures be made, if possible, the seat of a model democracy whose civil governor, selected by the President of the United States, shall be responsible for the operation of the Canal? However, at this, as at most cross-roads of public policies, there are more than two ways from which to select a course of procedure—and in this instance, as is usually the case, the road to take is one intermediate between the two extremes.

The area of the Canal Zone is less than most people suppose it to be. The entire area within the strip ten miles wide across the Isthmus is 436 square miles, and of this the United States, either directly or through the Panama Railroad Company, owns 363 square miles, the remaining 73 miles being private property. The Canal occupies 96 square miles, leaving but 267 miles of unappropriated government land. The future enlargements of the Canal and the construction of additional auxiliary works from time to time will require a part of this government land. A portion of the reservation will be required for military and naval purposes, present and future; and it is conceivable that a government reservation on the Isthmus of Panama might be of advantage to several departments of the government.

It will undoubtedly prove to be the wiser policy for the United States to reserve all the land it now owns within the Canal Zone for canal and other government purposes. The United States should also gradually acquire all privately owned land within the Zone. It would be a serious mistake, from every point of view, sanitary, economic, and military, to allow the narrow strip of land on each side of the Canal to be occupied by the shiftless shack-dwellers that have already begun to establish themselves on the margins of the jungle; and, however desirable a Zone population of American planters might be, it is not to be expected.

Those who anticipate the occupation of the Canal Zone by farmers from the United States seem not to have considered the economic limitations of the Zone, which consists, for the most part, of land too swampy to be drained, or too rough and irregular in configuration to be laid out in plantations that could be successfully cultivated. The climate of the country, as well as the contour of the land, is a

hindrance to agriculture. A rainy season of eight months and a dry season of but four months make the Zone a region of rank vegetation and of meager crops. The growing season is too long and the fruiting season too short.

A glance at the map of the Isthmus will partly explain why the Zone is not a favorable location for plantations. Where the Canal crosses the Isthmus, the distance from ocean to ocean is not only short, but the continental divide swings over close to the Pacific side, leaving no plateau between the mountains and the sea. In all Central American countries, it is upon the plateaus between the divide and the Pacific that the coffee and the sugar plantations and most of the ranches are located. There the annual rainfall is not excessive, and the dry season is of adequate length. Bananas are grown in large plantations near the Caribbean, and rubber-trees thrive on both sides of Central America, but most agricultural products, even cacao, are raised to better advantage on the uplands that slope toward the Pacific. Moreover, the climate is more salubrious than on the Caribbean side of the divide. For these reasons most of the population of Central America is near the Pacific.

The possibilities of banana culture on the Atlantic slope of the Canal Zone are extremely limited; and there is little, if any, land on the Pacific side adapted to coffee, sugar, or cacao culture. There is no prospect that capital will be invested in plantations within the Canal Zone. In other portions of the State of Panama, and in Central America generally, so much greater opportunities and so much more favorable economic and climatic conditions can always be found that capital will not favor the Canal Zone.

The policy of opening the Canal Zone to American settlers and the exclusion of Panamanians would doubtless be objectionable to Panama. The Zone lies across the center of the territory of the Republic of Panama. The Isthmian Canal Commission, in order to avoid friction with the Panamanian Government, adopted for the Canal Zone the Panamanian laws, which impose the numerous personal taxes and fees customary in Spanish countries. American settlers in the Zone would not submit to the Spanish system of taxation. There would have to be different tax laws within the Zone than there were across its boundaries, no matter how difficult it might be for Panama to enforce her laws in the neighborhood of the Zone. It may be argued that Panama ought to

change her laws; and probably she ought; but there is no prospect that Panama or any other country with Spanish institutions will adopt Anglo-Saxon theories of taxation.

To reserve the Canal Zone for government purposes will best serve the needs of the United States, and will minimize friction between the Zone authorities and the Panamanian Government.

Whether the United States shall decide to open the Zone to settlement, or whether it shall reserve the territory strictly for Government purposes, it will be necessary for Congress to provide for the administration of justice through appropriate courts. The judicial power should be exercised by judges entirely independent of the military and civil authorities.

It is to be hoped that Congress will vest in the President the military, civil, and judicial powers of the United States in the Canal Zone, leaving to him the organization of the machinery of government. The President should be authorized to establish one Circuit Court for the Zone and such inferior courts as may be found necessary. Like Federal judges, the justice of the Circuit Court of the Zone should be appointed by the President by and with the advice and consent of the Senate; but he should hold office for a limited term of about four years, in order that the President may be able, without embarrassment, to maintain at the head of the judicial system of the Zone a man of proven capacity.

At the present time there is a Supreme Court on the Canal Zone, consisting of the three Circuit Judges. This court has undoubtedly served a useful purpose during the period of construction when there was a large force of employees living in the Zone, but such a court will hardly be needed after the Canal has been put in operation.

Appeals from the Circuit Court of the Canal Zone had probably better be made to the Circuit Court of Appeals of the Fifth Circuit of the United States, which sits in New Orleans, and which is familiar with the principles of the Spanish law. The Circuit Court of the Canal Zone should have final jurisdiction in most matters, appeals being allowed, however, in actions and proceedings involving the "constitution, or any statute, treaty, title, right, or privilege of the United States." It might also be well to allow appeals in cases in which the property in controversy ex-

ceeds one thousand dollars in value. Cases involving criminal offenses punishable as felonies should be appealable to the Circuit Court sitting in New Orleans.

When the United States is at peace with foreign nations—and peace is our normal condition—the authority over the Canal Zone outside of the fortifications should center in the superintendent, or director, of the Canal and its auxiliary works—the railroad, the piers, dry-docks, machine and vessel repair-shops, coaling-stations, and other necessary and pertinent establishments. The chief concern of the United States upon the Isthmus is the operation and maintenance of the Canal; and in selecting the superintendent and defining his authority neither politics nor official red-tape should interfere with efficiency. Men admirably equipped with the technical knowledge and the administrative experience required to manage the Canal can be found in the Engineer Corps of the United States Army. The success attained by the Army Engineers in constructing the Canal makes this certain.

There are other strong reasons for selecting an engineer officer, instead of a civilian, to operate the Canal. The President, quite untrammelled by political influence, can detail an officer of the Engineer Corps for this duty, and such an officer will be a man whose training has developed both his initiative faculty and his sense of discipline. He is an officer who obeys commands and who compels obedience. His status as a United States engineer officer, holding a position with a life tenure, enables him to act independently of all influence except a zeal for public service. Politics should have nothing to do with the operation of the Canal, and the surest way to safeguard the Canal administration against political influences is to authorize the President to act through a detailed engineer officer.

The general organization for the operation of the Canal and the administration of the Zone might well be as follows:

Subject to the Colonel of Engineers, who is detailed by the President as Superintendent, or Director, of the Canal, there would be:

1. The Department of Canal Operation, within which there would be the foreman of locks, the power-plants, the terminals, and sub-foremen of dry-docks, machine-shops, and other works. A bureau of canal tolls and measurement of vessels would be a part of the department.

2. The Department of Railroad Operation, organized as is customary in the railroad service.

3. The Department of Sanitation and Quarantine in charge of an officer detailed by the President from the Public Health service.

4. The Department of Zone Administration, at the head of which would be the superintendent of the reservation. The work of civil administration in the Zone would be reduced to a minimum by the exclusion of settlers and by using the reservation only for government purposes.

This form of organization would provide a simple, unified, and economical administration during times of peace. When the United States became involved in a war, martial law would, naturally, be declared in the Canal Zone, and the Commander of the Fortifications would be given authority over the Canal until the restoration of peace.

Congress should pass a law early in the coming session, giving the President authority to operate the Canal so that he may retain the best men now on the Isthmus for the operating force, which will comprise from 2,000 to 3,000 men. The President will, naturally, act through the Chairman of the Isthmian Canal Commission, who should be directed to work out the operating organization during 1912, to establish a scale of wages to be paid the permanent force, to engage the men who are to be employed, and to begin as early in 1913 as is practicable to train these men for the duties they will have to perform when the Canal is opened for the passage of shipping, which will be on or before the beginning of 1914.

It is the belief of Colonel Goethals "that a lower wage scale can be put into effect for operating the Canal" than has prevailed for construction work, provided Congress will allow sufficient time for building up the permanent operating organization. Prompt legislation by Congress is desirable in order that the President may act without undue haste, and that the present Chairman of the Isthmian Canal Commission may be able to organize an operating force from among the employees now on the Isthmus.

The Canal is being constructed to serve the commerce of the United States and of the world. It will be of great naval importance to the United States, but its purpose is primarily commercial. The accomplishment of this purpose will, in large measure, depend upon the tolls charged for the use of the waterway. If the tolls are placed so high as to cause a large volume of traffic to keep to the route through the Straits of Magellan or to choose the Suez, instead of the Panama, route, the tonnage and commercial

usefulness of the Panama Canal will be unwisely limited; and, if the tolls are made lower than those that may be imposed without unduly restricting the use of the American waterway, the United States will fail to secure the revenue justified by the large expenditure of public funds that has been made for the construction of the Canal, and must be made year by year for its operation and maintenance. Panama Canal tolls should be fixed with reference to both their commercial and their fiscal results.

The time has come to decide what the tolls shall be. Indeed, it is now a year since such steamship companies as the American-Hawaiian Line, the Pacific Mail, the Royal Mail, and the Hamburg-American, and such large manufacturers as the Carnegie Steel Company, began to ask the Government what the tolls are to be at Panama. In order that steamship companies may be ready to expand their services upon the opening of the Canal, new ships must be ordered and adequate terminal facilities must be constructed or secured. Such large shippers and manufacturers as may desire to operate vessels of their own through the Canal, either in marketing their goods or securing supplies, must also have ships and terminals constructed; and it ordinarily requires about two years to design, contract for, construct, and put into service a well-appointed vessel. Business prudence will, of course, cause steamship companies and manufacturers to postpone the investment of capital in ships to use the Canal until they know what the tolls are to be.

It is desirable that carriers and shippers should be given ample time to prepare to use the Canal as promptly as possible upon its completion, in order that industry and trade may, without unnecessary delay, secure the benefits of cheaper transportation. The shifting of traffic from existing routes to those through the Canal will, in any event, require some time; distance alone does not determine the course taken by ocean vessels; various commercial factors have their influence; and many ocean-carriers will determine experimentally whether, or to what extent, it is profitable for them to use the Canal. On the other hand, many vessel-owners will, as soon as they know what tolls are to be charged, be able to decide whether to abandon existing routes upon the opening of the Canal. The use of the Canal during the first two years of its operation, and consequently

the service it renders commerce, and the revenues it yields the government, will be increased by an early announcement of the rate of tolls to be charged.

Bills that have been before Congress during the past year have wisely provided that the President shall fix the tolls and change them from time to time. These bills name the maximum and minimum points between which the rate of tolls shall be fixed; but the proposed legislation recognizes the fact that the adjustment of tolls to traffic is an administrative problem, and that the President should be allowed wide discretion in fixing the charges. Undoubtedly, Congress will, this winter, include in its Canal legislation a grant of authority to the President to decide what the tolls shall be, and to make such changes in them, from time to time, as may be justified by the volume of traffic and the amount of revenue obtained from the Canal.

EMORY R. JOHNSON.